

# SENATE BILL REPORT

## SB 5538

---

As of February 14, 2007

**Title:** An act relating to the employee assistance program.

**Brief Description:** Using information obtained through the employee assistance program.

**Sponsors:** Senators Fairley, Pridemore and Shin; by request of Department of Personnel.

**Brief History:**

**Committee Activity:** Government Operations & Elections: 2/13/07.

---

### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Staff:** Amy Van Horn (786-7784)

**Background:** In 1990, Washington established a state employee assistance program to help state employees resolve personal problems that impair or potentially impair their work performance. The program provides support and services, including substance abuse prevention and awareness activities, with a goal of promoting a safe, productive, and healthy state work force. The Director of Personnel administers the program.

Supervisors may refer employees to the program, or employees may use it voluntarily. The program assists and encourages supervisors to refer employees. An employee's participation in the program and the personal information shared there is held in strict confidence, with one exception. If agency management refers an employee to the assistance program due to poor work performance, then the program provides the following information to agency management: whether or not the employee made an appointment; when the appointment occurred; whether the employee agreed to follow the advice of counselors; and whether further appointments were scheduled.

Employees' participation or nonparticipation in the employee assistance program may not be used as a factor in any decision affecting their job security, promotional opportunities, corrective or disciplinary action, or other employment rights.

**Summary of Bill:** An employee's participation or nonparticipation in the employee assistance program may be used as one factor, but not the sole factor, in decisions affecting that employee's job security, promotional opportunities, corrective or disciplinary action, or other employment rights.

**Appropriation:** None.

**Fiscal Note:** Available.

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: The purpose of the bill is to address last chance agreements, in which an employee agrees to participate in the employee assistance program in lieu of termination. There was a lawsuit a couple years ago after an employee had signed a last chance agreement, agreed to attend counseling, and then did not attend the counseling he had contracted to attend. When he was terminated, he sued. So now some supervisors and agencies are reluctant to use the program as an alternative to straight-out termination, and employees who might benefit from counseling and be able to keep their jobs lose them instead.

CON: Employees need to be able to trust the employee assistance program for it to work for them. They will not agree to use the program at all if they know their participation may not be totally confidential. Employees have believed for years that this program is totally confidential, that what happens there will never go on their employment record. Under this bill that will no longer be true. Your workplace should only evaluate you on what you do while you're at work. Under this bill, if an employee does not want to take the medication regimen they are advised to take by a counselor, for example, they could be fired for that.

**Persons Testifying:** PRO: Mike Sellars, Washington Department of Personnel.

CON: Matt Zurich, Washington Federation of State Employees; Paquita Rupp, citizen.